

To: Lucas, Olivia D.[Olivia.Lucas@FaegreBD.com]; Sisk, Richard[Sisk.Richard@epa.gov]
Cc: Wall, Dan[wall.dan@epa.gov]; Rudy, Michael[Rudy.Mike@epa.gov]; Schmittiel, Paula[Schmittiel.Paula@epa.gov]
From: Fagen, Elizabeth
Sent: Fri 6/5/2015 9:34:16 PM
Subject: RE: RMMC - Request for Access for WQ Sampling
Consent for Access WQ Sampling - RMMC 06052015.pdf

Hi Olivia,

Thank you so much for responding so quickly. Here is the updated Consent for Access form. Please let me know if you have any questions regarding the form. Have a great weekend.

Liz

Liz Fagen, P.E.

Environmental Engineer

US EPA Superfund Project Manager

(303) 312-6095

EPA Region 8

1595 Wynkoop St., Denver, CO 80202

From: Lucas, Olivia D. [mailto:Olivia.Lucas@FaegreBD.com]
Sent: Friday, June 05, 2015 1:56 PM
To: Sisk, Richard; Fagen, Elizabeth
Cc: Wall, Dan; Rudy, Michael; Schmittiel, Paula
Subject: RE: RMMC - Request for Access for WQ Sampling

Hello Richard,

I've checked with MRRC and they're willing to allow access on the terms you describe: 30 days notice, 120 days for sampling information. Below is the language from yesterday, as revised per our recent emails.

By signing this Access Agreement, the Property Owner is granting EPA, its employees and their

contractors, and representatives including the United States Geological Survey (USGS), United

States Fish & Wildlife Service (USFWS), Bureau of Land Management (BLM), the Colorado

Department of Public Health and Environment (CDHPE) and the Colorado Division of

Reclamation, Mining & Safety (CDRMS) (collectively, the Agencies) the right to enter the property, at all reasonable times

and with at least 30 days' prior notice, for the sole purpose of conducting the sampling described above. This

consent for access shall remain in effect for a period of [5 2] years from the date of signature of this

agreement.

AGREEMENT NOT TO INTERFERE

The Property Owner agrees to not interfere or tamper with any of the water quality and sediment

sampling activities, or the equipment used to perform the sampling activities.

The Agencies agree that, in the event a representative of the Property Owner is not in attendance for the sampling activity, the relevant Agency or Agencies will provide to the Property Owner within 120 90-days of the sampling event results from the sampling

event, including the sampling coordinates, the QA/QC data, the field notes from the sampling activity, and other relevant sampling information that the Property Owner may request.

This written permission is given voluntarily with knowledge of the right to refuse and without

compulsion or promises of any kind. The Property Owner understands that if there is any damage

by the work conducted by ~~EPA~~ any of the Agencies or their authorized representatives, contractors, or sub-contractors

then authorized representatives, contractors or sub-contractors shall repair such damage

~~to the extent practicable., and that the relevant Agency shall take full responsibility for any accident or personal injury arising from the activities of authorized representatives, contractors or sub-contractors on the site.~~

If you can please send a revised document, we'll get it signed and sent back.

Thanks,

Olivia

Olivia D. Lucas

Counsel

olivia.lucas@FaegreBD.com [Download vCard](#)

D: +1 303 607 3686 | M: +1 303 819 0781 | F: +1 303 607 3600

Faegre Baker Daniels LLP

3200 Wells Fargo Center | 1700 Lincoln Street | Denver, CO 80203-4532, USA

From: Sisk, Richard [<mailto:Sisk.Richard@epa.gov>]

Sent: Thursday, June 04, 2015 5:25 PM

To: Lucas, Olivia D.; Fagen, Elizabeth

Cc: Wall, Dan; Rudy, Michael; Schmittiel, Paula

Subject: RE: RMMC - Request for Access for WQ Sampling

Olivia – I am out of the office tomorrow, so please make sure you contact Liz after you check in with your client.

I asked Liz regarding the 30 day notice and, except for next week, of course, she indicated that would be no problem. Liz also asked if the time on providing data could be set at 120 days because she is not sure how quickly the lab will get the reports out, especially during the busy times of the year.

Thanks

Richard Sisk
Attorney
U.S. EPA Region 8
ENF-L
1595 Wynkoop
Denver, CO 80202-1129

Phone: 303-312-6638
Fax: 303-312-6409
E-mail: sisk.richard@epa.gov

NOTICE: The information contained in this e-mail is intended only for the use of the recipient(s) named above. This message and any attachments may contain confidential or privileged information. If the reader is not the intended recipient or an agent responsible for delivering it to the intended recipient, you have received this document in error and any review, dissemination, disclosure, distribution, use, or copying of the contents of this message is strictly prohibited. If you have received this communication in error, please notify me immediately by e-mail or telephone and destroy all copies of the original message and any attachments.

From: Lucas, Olivia D. [<mailto:Olivia.Lucas@FaegreBD.com>]
Sent: Thursday, June 04, 2015 5:12 PM
To: Sisk, Richard; Fagen, Elizabeth
Cc: Wall, Dan; Rudy, Michael; Schmittiel, Paula
Subject: RE: RMMC - Request for Access for WQ Sampling

Thanks for your reply Richard. That explanation is helpful. I'll check in with the client and be back in touch tomorrow.

Olivia

Olivia D. Lucas

Counsel

olivia.lucas@FaegreBD.com [Download vCard](#)

D: +1 303 607 3686 | M: +1 303 819 0781 | F: +1 303 607 3600

Faegre Baker Daniels LLP

3200 Wells Fargo Center | 1700 Lincoln Street | Denver, CO 80203-4532, USA

From: Sisk, Richard [<mailto:Sisk.Richard@epa.gov>]

Sent: Thursday, June 04, 2015 3:29 PM

To: Lucas, Olivia D.; Fagen, Elizabeth

Cc: Wall, Dan; Rudy, Michael; Schmittiel, Paula

Subject: RE: RMMC - Request for Access for WQ Sampling

Olivia – Thanks for responding to this request for access so quickly. I have several comments on what you have written below.

EPA is requesting your client's consent for EPA to access these properties, this is not an access agreement. I realize that the term agreement is used in several places in the consent for access form Liz sent to you, so I apologize for any confusion that may have created.

EPA is willing to accept reasonable conditions on a consent for access. Unfortunately, EPA cannot agree to the provision added below regarding accepting full responsibility for any accident or personal injury to our contractors or subcontractors. EPA's contractors are required to be fully insured, including having workman's compensation insurance.

Also, I haven't spoken to Liz on the 30 day notice provision, so I can't say whether that is something to which we can agree. I think we can agree to the other changes you have suggested.

Thanks

Richard Sisk
Attorney
U.S. EPA Region 8
ENF-L
1595 Wynkoop
Denver, CO 80202-1129

Phone: 303-312-6638
Fax: 303-312-6409
E-mail: sisk.richard@epa.gov

NOTICE: The information contained in this e-mail is intended only for the use of the recipient(s) named above. This message and any attachments may contain confidential or privileged information. If the reader is not the intended recipient or an agent responsible for delivering it to the intended recipient, you have received this document in error and any review, dissemination, disclosure, distribution, use, or copying of the contents of this message is strictly prohibited. If you have received this communication in error, please notify me immediately by e-mail or telephone and destroy all copies of the original message and any attachments.

From: Lucas, Olivia D. [<mailto:Olivia.Lucas@FaegreBD.com>]
Sent: Thursday, June 04, 2015 2:25 PM
To: Fagen, Elizabeth
Cc: Wall, Dan; Rudy, Michael; Sisk, Richard; Schmittiel, Paula
Subject: RE: RMMC - Request for Access for WQ Sampling

Hello Liz,

Thank you for your email and providing the proposed access request. In general, MRRC is amenable to EPA's access to the site next week. Although Scott Miller cannot be there next week, we appreciate the agency's need to sample soon to get high-flow data and do not want to hinder that. Therefore, we're prepared to sign the access agreement with a few refinements. First, we are requesting that the access agreement contain a commitment to provide MRRC with information relevant to the investigation, including the results of EPA's sampling within 90 days of the sampling event, including the coordinates of the sample, the QA/QC data, and any field notes when an MRRC representative cannot attend sampling event(s). We also request the access agreement include a provision that the advance notice of future monitoring will be within 30 days of the event, so that hopefully in the future we can coordinate schedules to have a representative present. We're prepared to agree to a two-year duration of the agreement and will be happy to discuss a renewed agreement if the agency needs access after 2017. Finally, we request that EPA take responsibility for any accident or injury to its subcontractors and contractors. Proposed language for the agreement is provided below; new language is in blue font and proposed deletions are in ~~red strikethrough~~.

By signing this Access Agreement, the Property Owner is granting EPA, its employees and their

contractors, and representatives including the United States Geological Survey (USGS), United

States Fish & Wildlife Service (USFWS), Bureau of Land Management (BLM), the Colorado

Department of Public Health and Environment (CDHPE) and the Colorado Division of

Reclamation, Mining & Safety (CDRMS) (collectively, the Agencies) the right to enter the property, at all reasonable times

and with at least 30 days' prior notice, for the sole purpose of conducting the sampling described above. This

consent for access shall remain in effect for a period of [5 2] years from the date of signature of this

agreement.

AGREEMENT NOT TO INTERFERE

The Property Owner agrees to not interfere or tamper with any of the water quality and sediment

sampling activities, or the equipment used to perform the sampling activities.

The Agencies agree that, in the event a representative of the Property Owner is not in attendance for the sampling activity, the relevant Agency or Agencies will provide to the Property Owner within 90 days of the sampling event results from the sampling event, including the sampling coordinates, the QA/QC data, the field notes from the sampling activity, and other relevant sampling information that the Property Owner may request.

This written permission is given voluntarily with knowledge of the right to refuse and without

compulsion or promises of any kind. The Property Owner understands that if there is any damage

by the work conducted by ~~EPA~~ any of the Agencies or their authorized representatives, contractors, or sub-contractors

then authorized representatives, contractors or sub-contractors shall repair such damage

to the extent practicable, and that the relevant Agency shall take full responsibility for any accident or personal injury arising from the activities of authorized representatives, contractors or sub-contractors on the site.

Please let me know if you have any questions.

Thank you,

Olivia

Olivia D. Lucas

Counsel

olivia.lucas@FaegreBD.com [Download vCard](#)

D: +1 303 607 3686 | M: +1 303 819 0781 | F: +1 303 607 3600

Faegre Baker Daniels LLP

3200 Wells Fargo Center | 1700 Lincoln Street | Denver, CO 80203-4532, USA

From: Fagen, Elizabeth [<mailto:Fagen.Elizabeth@epa.gov>]

Sent: Tuesday, June 02, 2015 6:57 PM

To: Lucas, Olivia D.

Cc: Wall, Dan; Rudy, Michael; Sisk, Richard; Schmittziel, Paula

Subject: RMMC - Request for Access for WQ Sampling

Hi Olivia,

Thanks for the opportunity to chat earlier. Please see the attached request for access letter and form. We are hoping to sample the comet mine location next week, so if there is any way we could expedite the review and approve of access, that would be greatly appreciated. I apologize for the last minute request. Please let me know if you have any additional questions regarding our request.

Thank you,

Liz

Liz Fagen, P.E.

Environmental Engineer

US EPA Superfund Project Manager

(303) 312-6095

EPA Region 8

1595 Wynkoop St., Denver, CO 80202